

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PAM BOLTE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,946
<b>TONY'S PIZZA SERVICE</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant requested review of the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated May 16, 1996.

**ISSUES**

The Administrative Law Judge denied claimant's request for medical treatment and temporary total disability benefits. However, the Judge ordered respondent and its insurance carrier to pay the medical bills claimant incurred with Dr. Gardner before March 6, 1996 as authorized medical expense and the bills incurred after that date as unauthorized medical expense. Although the Administrative Law Judge did not state the reasons for denying claimant's requests in the Order, the Judge stated at the hearing, as shown by the preliminary hearing transcript, that he found claimant's fibromyalgia to be unrelated to her work. The Judge also indicated that claimant testified she was capable of engaging in substantial and gainful employment during the time frame for which she sought temporary total disability benefits and that claimant's medical evidence failed to establish the need for additional treatment. The respondent does not dispute that claimant strained her right upper extremity at work. However, the respondent disputes that claimant's fibromyalgia is related to her work.

In her brief filed with the Appeals Board, claimant requested the Appeals Board to review the following issues:

- "1. Whether or not Appellant met with personal injury by accident;
- "2. Whether or not said personal injury by accident arose out of and in the course of Appellant's employment;
- "3. Temporary total disability benefits; and
- "4. Authorization of medical treatment with Dr. Gardner."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds:

(1) The question whether claimant has fibromyalgia which is either caused or aggravated by a work-related accident gives rise not only to the question of nature and extent of injury, but also to the issue of whether claimant has sustained personal injury by accident arising out of and in the course of her employment with the respondent. Thus, the Appeals Board has jurisdiction and authority to review issues numbered 1. and 2. above, on preliminary hearing orders under K.S.A. 44-534a, as amended by S.B. 649 (1996).

(2) The Appeals Board finds that the preliminary hearing Order entered by the Administrative Law Judge should be affirmed. The Administrative Law Judge was persuaded by the opinions of both orthopedic surgeon, Gary L. Harbin, M.D., and J. Douglas Gardner, M.D., that claimant's work did not cause her fibromyalgia or worsen her condition although it may aggravate her symptoms. Both of those doctors were treating physicians. The Administrative Law Judge did not accept the opinion of Sharon L. McKinney, D.O., a doctor specializing in physical medicine and rehabilitation, that claimant's fibromyalgia was caused by her work. For preliminary hearing purposes, the Appeals Board adopts the conclusion of the Administrative Law Judge that claimant has failed to establish that her fibromyalgia is related to her work or that the underlying condition has been worsened by her work activities.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated May 16, 1996, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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**BOARD MEMBER**

- c:     Jan L. Fisher, Topeka, KS  
       John W. Mize, Salina, KS  
       David G. Shriver, McPherson, KS  
       Bruce E. Moore, Administrative Law Judge  
       Philip S. Harness, Director